

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI -DADE COUNTY, FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF  
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,  
a Florida corporation, M.A.M.C.  
INCORPORATED, a Florida corporation,  
DANA J. BERMAN, as Owner and Managing  
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability  
company, et al.,

Relief Defendants.

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**PLEASE READ THIS MOTION CAREFULLY AS IT MAY  
AFFECT YOUR RIGHTS. PLEASE CONSULT YOUR  
ATTORNEY IF YOU HAVE ANY QUESTIONS.**

**THIS COURT WILL HOLD A HEARING AT THE MIAMI-DADE  
COURTHOUSE ON MONDAY, DECEMBER 15, 2008, AT 10:15 A.M. TO  
CONSIDER THIS MOTION AND THE RELIEF REQUESTED HEREIN.  
IF YOU HAVE ANY OBJECTION TO THE APPROVAL OF THE  
MOTION AND RELIEF REQUESTED, YOU MUST ATTEND THE  
HEARING, OTHERWISE YOU WILL BE BOUND BY THE TERMS OF  
THIS BAR ORDER. THE DATE, TIME AND LOCATION OF THE  
HEARING WILL ALSO BE POSTED ON THE RECEIVERSHIP  
WEBSITE AND A NOTIFICATION WILL BE EMAILED TO ALL MAMC  
LENDERS AS TO THE EXISTANCE OF THE WEB PAGE POSTING.**

BERGER SINGERMAN  
attorneys at law

*Boca Raton Fort Lauderdale Miami Tallahassee*

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

**RECEIVER'S MOTION FOR APPROVAL OF THE ATTACHED  
NORMANDY HOLDINGS, II, LLC SETTLEMENT AGREEMENT AND FOR ENTRY  
OF A BAR ORDER ENJOINING ALL NOTICED PARTIES FROM PROSECUTING  
CLAIMS AGAINST NORMANDY HOLDINGS II, LLC, IRA SUKOFF,  
THE RECEIVER REGARDING NORMANDY HOLDINGS II, LLC**

Michael I. Goldberg ("Receiver"), as a court-appointed receiver for M.A.M.C. Incorporated ("MAMC") and Relief Defendant Normandy Holdings II, LLC ("NH II"), files this Motion seeking the entry of a Bar Order enjoining all Noticed Parties from prosecuting claims against NH II, the Receiver and Ira Sukoff, and approving the attached Settlement Agreement between the Receiver and Ira Sukoff, on the terms set forth therein and in support of the Motion, the Receiver states as follows:

**M.A.M.C.'s Operations and the Appointment of the Receiver**

1. Prior to receivership, MAMC was in the business of lending money to high credit risk borrowers including single purpose real estate LLCs owned by the principal of MAMC, Dana Berman and solicited and raised funds for through private placement memorandums.

2. To fund its operations and the loans made, MAMC raised funds from approximately 640 individuals, some of whom directly invested in the loans and in equity positions in NH II.

3. The State of Florida for the reasons stated in the complaint in this case seized control of the defendants and relief defendants and On December 11, 2007, this Court appointed Michael Goldberg to be the Receiver for MAMC and Relief Defendant NH II. *See* Temporary Injunction and Agreed Order Appointing Receiver (the "Receivership Order"), previously on file with this Court.

4. Pursuant to the Receivership Order, the Receiver is authorized to take control of the Receivership Entities, as that term is defined in the Receivership Order, manage their

operations and assets, wind up their business affairs and exercise all rights afforded under Florida law as more fully set out in the Receivership Order.

**Normandy Holdings II, LLC and The Disputes**

5. NH II was formed to take title to certain real property and develop certain townhomes in the Normandy Isles area of Miami. The original members of NH II were Ira Sukoff (Sukoff), Dana Berman (Berman) and Daren Schwartz (Schwartz) (hereinafter referred to collectively as the "Original Members"). During the development process, the Original Members decided to raise funds through an equity raise using two separate private placement memorandums. Through this process, several of the MAMC Lenders purchased equity interests in NH II and became the New Members of NH II.

6. NH II developed and built the townhome project. At the time of the institution of this Receivership, a number of the townhomes remained unsold and the project was subject to a third party loan that was in default and accruing interest at a default rate. The Receiver and his counsel marketed and sold all but one of the remaining units and paid off the third party loan in full. The Receiver has the last unsold unit under contract. The Receiver now has funds that need to be distributed, to which there are multiple claimants and through this motion seeks to resolve all disputes regarding entitlement to the funds and establish how the funds shall be distributed.

7. The NH II private placement memorandums provided for certain management fees, development fees and equity participation in profits. During the development of NH II, certain of the management fees and development fees that were available for distribution to the Original Members were not taken at the time of closing of certain loans and sale of certain assets, the Deferred Fees. Sukoff claims he is entitled to the full remaining balance of the funds available for distribution as Deferred Fees.

8. The New Members claim there were certain inadequacies with respect to the disclosures made in the private placement memorandums which if proved would exclude any payment to Sukoff. The Receiver acknowledges Sukoff's argument that there may be standing and statute of limitations issue with respect to prosecuting claims relating to the disclosures in the private placement memorandums. As such there may be necessary litigation to resolve these potential disputes before a distribution is made if the proposed Settlement is not approved.

9. The private placement memorandums do not clearly establish a priority in the waterfall for distribution with respect to priority among the New Members and the Original Members. The New Member claim that a preferred dividend contemplated under the private placement memorandums must be paid before any distribution to the Original Members. Sukoff claims the Deferred Fees have a priority in repayment.

10. MAMC claims an interest in the funds available for distribution by virtue of certain intercompany transfers made at the direction of Berman.

11. Sukoff has intervened in the Receivership case and asserts a claim to all of the funds available for distribution as Deferred Fees.

12. The Receiver contends that for equitable reasons no distribution should be made to Berman or Schwartz.

### The Settlement

13. Sukoff and the Receiver have entered into a settlement to avoid the significant expense of litigating the disputes outlined above, to provide for an effective and speedy adjudication of the rights of the parties and to allow for a distribution as soon as practical. Through the approval of the Settlement and Bar Order, the Receiver seeks to further bar claims by Berman and Schwartz against Sukoff, the Receiver and the Original Members to the funds

available for distribution by NH II other than as provided for in this Motion and to provide finality to the winding up of this asset.

14. Through this Motion and Bar Order, the Receiver seeks to preclude the Original Members from prosecuting claims against the Receiver, Sukoff and NH II, and seeks to establish that the Original Members sole return on investment from this Receivership Asset shall be the funds ordered distributed in accordance with this Motion and the Settlement Agreement.

15. By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction. Art. V, § 5(b), Fla. Const.; § 26.012(2)(c), Fla. Stat.; *Terex Trailer Corp. v. McIlwain*, 579 So.2d 237, 241 (Fla. 1st Dist. 1991). As a "Court of Equity," this Court has vested jurisdiction to enter this bar order.

16. The avoidance of a multiplicity of lawsuits is a basis to invoke equitable jurisdiction. *Realty Bond & Share Co. v. Englar*, 142 So. 152 (Fla. 1932). *Dotolo v. Schouten*, 426 So.2d 1013 (Fla. 2d DCA 1983); *NEC Electronics, Inc. v. VG Sales Co.*, 655 So.2d 1146 (Fla. 4<sup>th</sup> DCA 1995).

17. Accordingly, the Receiver seeks the entry of this Bar Order which will prevent that the multiplicity of suits that may arise if this Settlement is not approved, and this Bar Order is not entered. The Settlement Agreement and its terms are incorporated by reference herein.

18. A copy of this Motion is being:

(i) posted on the Receiver's website, which is available to all MAMC Lenders/Investors;

(ii) notification of the filing of this motion is being e-mailed to all MAMC Lenders advising them to read the motion on the web site;

(iii) sent by mail to Daren Schwartz.

(iv) sent by mail to Dana Berman's counsel, Charles W. Throckmorton.

(v) sent by mail to Ira Sukoff's counsel, Howard Kahn.

(vi) sent by mail to Mark Gidney, CPA, accountant to NH II.

19. Collectively these Parties mentioned in paragraph 18 are the "Noticed Parties."

20. The Noticed Parties, through this Motion are advised that they have an opportunity to attend the hearing on approval of this Motion and Settlement Agreement and entry of the Bar Order and to object or otherwise comment prior to the entry of the Bar Order and Settlement Approval Order.

21. To the extent any of the Noticed Parties fail to respond and/or object to this Motion and the Settlement Agreement, such failure shall be deemed a waiver of any right to contest the Motion, Bar Order and the Settlement Agreement and the proposed distribution set forth herein.

### **THE DISTRIBUTIONS**

22. The Receiver seeks court approval to distribute the funds available for distribution as follows:

- (i) Reimbursement of Accounting Fees to Ira Sukoff based on submissions of invoices to the Receiver of payments made by Sukoff for accounting fees for the benefit of NH II, of up to \$5,000, to be paid from the funds allocated to the Original Members.
- (ii) Payment of \$7,500 to Berger Singerman P.A. as counsel for Receivership for administration of the NH II assets.
- (iii) Payment of Accounting Fees to Marc Gidney for past work performed on behalf of NH II in the amount of \$16,700.
- (iv) Creation of a reserve to pay accounting fees for 2008 and 2009 accounting services in the amount of \$12,000. Any remaining balance after payment of the future accounting fees shall be

distributed with one-third ( $\frac{1}{3}$ ) of the remaining funds available for distribution to Ira Sukoff and the remaining two-thirds ( $\frac{2}{3}$ ) to the Original Members.

- (v) After payment of the items in ii, iii, iv, distribution of one-third ( $\frac{1}{3}$ ) of the remaining funds available for distribution to Sukoff.
- (vi) After distribution of the items in i-v, a payment of \$280,000.00 shall be made to MAMC for reimbursement of inter-company loans, with interest.
- (vii) After payment of items in i-vi, Payment of all outstanding Attorneys' Fees and Receivership Fees associated with the defense of the Sukoff claims in an amount to be supported by supplemental filings by the Receiver and his counsel.
- (viii) Thereafter a reserve of \$5,000.00 shall be created for Receivership fees and attorneys' fees for future administration of this estate.
- (ix) The remaining funds currently available for distribution shall be paid to the Original Members in accordance with their percentage interest.
- (x) Upon the sale of the final unit owned by NH II, from the net sales proceeds a distribution shall be made to Ira Sukoff of one-third ( $\frac{1}{3}$ ) and to the Original Members shall receive two-thirds ( $\frac{2}{3}$ ).

**WHEREFORE**, the Receiver, Michael I. Goldberg, requests this Honorable Court to:

1. Enter an Order granting the Motion and approving the attached Settlement Agreement;
2. Forever enjoin the Noticed Parties from prosecuting claims against NH II, the Receiver and Ira Sukoff regarding NH II;
3. Authorizing the distribution of the remaining funds of NH II and the net sales proceeds when realized from the sale of the last unsold unit, in accordance with the Motion.

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail on this **2<sup>nd</sup> day of December 2008**, to: **Cristina Saenz, Assistant General Counsel**, STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION, 401 N.W. 2<sup>nd</sup> Avenue, Suite N-708, Miami, Florida 33128; to **Alan M. Sandler, Esquire, Counsel for Defendants, Joel and Deborah Sokol, Darlene Levasser, Robert Dzimidas IRA, Lawrence Meyer**

*IRA, Lawrence Meyer Roth IRA and Mary Joe Meyer SD IRA and Mary Joe Meyer Roth IRA*, of SANDLER & SANDLER, 117 Aragon Avenue, Coral Gables, Florida 33134; to **Allan A. Joseph, Esquire**, *Counsel for The Amadi Companies and Amedia Family Investors*, DAVID AND JOSEPH, P.L., 1001 Brickell Bay Drive, Suite 2002, Miami, Florida 33131; to **Richard R. Robles, Esquire**, LAW OFFICES OF RICHARD ROBLES, P.A., *Counsel for the Four Ambassadors Association, Inc.*, 905 Brickell Bay Drive, Tower II, Mezzanine, Suite 228, Miami, Florida 33131; to **Daniel Kaplan, Esquire**, *Counsel for Deborah A. Berman*, at the LAW OFFICES OF DANIEL KAPLAN, P.A., Turnberry Plaza, Suite 600, 2875 N.E. 191<sup>st</sup> Street, Aventura, Florida 33180; to **Howard N. Kahn, Esquire**, *Attorneys for Intervenor, Ira Sukoff*, KAHN, CHENKIN & RESNIK, P.L., 1815 Griffin Road, Suite 207, Dania, Florida 33304; to **Charles Pickett, Esquire and Linda Dickhaus Agnant, Esquire**, *Attorneys for Johns Manville*, CASEY CIKLIN LUBITZ MARTENS & O'CONNELL, P.A., 515 North Flagler Drive, Suite 1900, West Palm Beach, Florida 33401; to **Helen Schwartz Romañez, Esquire**, *Attorneys for Turnberry Bank & Bank of Coral Gables*, The Romañez Law Firm, 255 Alhambra Circle, Suite 850, Coral Gables, Florida 33134; to **Charles W. Throckmorton, Esquire**, *Attorneys for Dana Berman*, KOZYAK TROPIN THROCKMORTON, P.A., 2525 Ponce de Leon Boulevard, 9<sup>th</sup> Floor, Coral Gables, Florida 33134; to **James S. Telepman, Esquire**, *Attorneys for Jericho All-Weather Opportunity Fund, LP*, COHEN, NORRIS, SCHERER, WEINBERGER & WOLMER, 712 U.S. Highway One, Suite 400, North Palm Beach, Florida 33408-7146; to **Allen P. Pegg, Esquire**, *Counsel for Ibex Cheoah I, LLC*, at MURAI, WALD, BIONDO, MORENO & BROCHIN, P.A., Two Alhambra Plaza, Penthouse 1B, Coral Gables, Florida 33134; to **J. Andrew Baldwin, Esquire**, *Attorneys for Regions Bank*, THE SOLOMON LAW GROUP, P.A., 1881 West Kennedy Boulevard, Tampa, Florida 33606-1606; to **Rey Hicks and Javier Castillo** of COMPLETE PROPERTY MANAGEMENT, at Post Office Box 402507, Miami Beach, Florida 33140; to **Daren Schwartz**, 12555 Biscayne Boulevard, Unit #930, North Miami, Florida 33181; to **Norman S. Segall, Esquire**, *Attorneys for Skilled Services of Tampa Bay, LLC*, RUDEN McCLOSKEY SMITH SCHUSTER & RUSSELL, P.A., 701 Brickell Avenue, Suite 1900, Miami, Florida 33131; to **Norman Malinski, Esquire**, *Counsel for Giles Construction*, 2875 NE 191<sup>st</sup> Street, Suite 508, Aventura, Florida 33180; **Gabrielle D'Alemberte, Esquire**, LAW OFFICES OF ROBERT PARKS, 2121 Ponce de Leon Boulevard, Suite 505, Coral Gables, Florida 33134; to **Robert B. Miller, Esquire**, *Attorneys for Atlantic Lending, LLC*, TABAS, FREEDMAN, SOLOFF & MILLER, P.A., The Ingraham Building 25 SE 2<sup>nd</sup> Avenue,

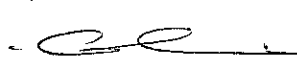


Suite 919, Miami, Florida 33131-1538; to **Richard P. Cole, Esquire, Edward S. Polk, Esquire and/or Crystal Leah Arocha, Esquire**, *Attorneys for Meland Russin Hellinger & Budwick, P.A. COLE SCOTT & KISSANE, P.A.*, Pacific National Bank Building, 1390 Brickell Avenue, Third Floor, Miami, Florida 33131; and The Receiver shall subsequently file a Notice of Service as to service upon the Noticed Parties.

Respectfully submitted,

**BERGER SINGERMAN**  
*Attorneys for Receiver, Michael Goldberg*  
1000 Wachovia Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131  
Direct Line: (305) 714-4383  
Telephone: (305) 755-9500  
Facsimile: (305) 714-4340  
E-Mail: [jgassenheimer@bergersingerman.com](mailto:jgassenheimer@bergersingerman.com)

By: \_\_\_\_\_

  
**JAMES D. GASSENHEIMER**  
~~Florida Bar No. 959987~~

cc: The Honorable Thomas Wilson, Jr. (*via Hand-Delivery*)  
Michael Goldberg, Esq., as Receiver (*via e-mail*)  
The Investor(s)/Lender(s) Group (*via e-mail*)

1833305-1

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between Ira Sukoff, (“Sukoff”) and Michael I. Goldberg, as Receiver (“Receiver”) for M.A.M.C. Incorporated (“MAMC”) and Normandy Holdings, II, LLC (“NH II”).

*WHEREAS*, The Receiver acts pursuant to Judge Wilson’s Order dated December 11, 2007 in Case No. 07-43672-CA-09 (the “Receivership Case”), appointing Michael I. Goldberg as the Receiver over MAMC and NH II.

*WHEREAS*, Sukoff is an Intervenor in the Receivership Case, wherein Sukoff claims a right to all of the Net Sales Proceeds (defined as the remaining undistributed funds on account with the Receiver) of NH II.

*WHEREAS*, Sukoff, Dana Berman (“Berman”) and Daren Schwartz (“Schwartz”) were the Original Members of NH II.

*WHEREAS*, MAMC is a loan servicer who acts on behalf of certain lenders (“MAMC Lenders”).

*WHEREAS*, the original members of NH II offered in two separate private placement memorandum, investment opportunities to the MAMC Lenders.

*WHEREAS*, certain of the MAMC Lenders purchased interests pursuant to said private placement memorandums and became the New Members of NH II.

*WHEREAS*, the New Members of NH II also claim an interest in the Net Sales Proceeds of NH II by virtue of the preferred dividend contemplated by the private placement memorandums.

*WHEREAS*, the Receiver claims an interest in the Net Sales Proceeds of NH II by virtue of owning the interests of Berman.

*WHEREAS* MAMC claims an interest in the Net Sales Proceeds by virtue of certain intercompany transfers directed by Berman.

*WHEREAS*, there are disputes between MAMC, the New Members and the Original Members of NH II as to certain representations made with respect to the private placement memorandum.

*WHEREAS*, the Receivership estate has limited resources available to litigate these disputes.

*WHEREAS*, the Receiver has marketed and sold all but one of the town homes developed by NH II and has used the sales proceeds to pay off all third party financing. The remaining Net Sales Proceeds total \$1,255,145.14. The Receiver has under contract for sale one last town home which is under contract for sale with a gross sales price of \$440,000.

*WHEREAS*, the Receiver has negotiated what he believes to be a reasonable economic resolution and settlement of the claims to the Net Sales Proceeds on the terms set forth herein and by agreeing to settle all disputes through this Agreement and a bar order and thereby avoid the expense and delays associated with litigating these disputes.

#### **AGREEMENT**

**NOW THEREFORE IN CONSIDERATION** of the foregoing, the mutual covenants and considerations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sukoff, The Receiver (the "Settlement Parties") agree to the following terms and conditions:

1. **RECITALS**: The Settlement Parties agree that the recitals above are true and correct.

2. **REIMBURSEMENT OF EXPENSES:** The Receiver agrees to reimburse Sukoff for accounting expenses incurred by Sukoff on behalf of NH II. The payment shall be made from that portion of the funds allocated herein to the New Members and shall be in an amount not to exceed \$5,000. Payment shall be conditioned on submission of copies of invoices and proof of payment by Sukoff.

3. **PROFESSIONAL FEES:** The Receiver shall pay from the Net Sales Proceeds the sum of \$7,500 to Berger Singerman for professional fees associated with the administration of the estate. The Receiver shall pay \$16,700 to Marc Gidney for past accounting fees for work performed on behalf of NH II. \$12,000 shall be escrowed from the Net Sales Proceeds to pay 2008, and if necessary, 2009 accounting fees for NH II. Sukoff has the right to try to obtain the future accounting services for less than the amount escrowed. If either the Receiver or Sukoff are able to obtain the future accounting services for less than the amounts escrowed, the remaining balance shall be distributed to Sukoff and the New Members of NH II in a ratio of one third to Sukoff and two thirds to the New Members.

4. **SETTLEMENT TERMS:** Sukoff shall receive one-third ( $\frac{1}{3}$ ) of the Net Sales Proceeds after payment of accounting and professional fees, as set forth herein and above. This shall result in an initial distribution to Sukoff of \$406,314.64. From the remaining currently available Net Sales Proceeds, MAMC shall receive \$280,000.00 as reimbursement of advanced expenses / inter company transfers, the attorneys' fees, costs and receivership fees associated with prosecuting the claims between Sukoff and NH II, shall be paid and the balance of the Net Sales Proceeds shall be paid to the New Members of NH II. Upon closing of the sale of the last unit of NH II, the net sales proceeds shall be divided with one-third ( $\frac{1}{3}$ ) being paid to Sukoff and two-thirds ( $\frac{2}{3}$ ) to the New Members, however the portion allocated to the New Members shall be

first used to pay any additional legal fees, Receiver fees and costs Sukoff shall bear his own attorney's fees and costs from the Net Sales Proceeds allocated to him.

5. **CHOICE OF LAW:** This Agreement shall be construed in accordance with the laws of the State of Florida, both substantive and remedial.

6. **ENTIRE AGREEMENT:** This Agreement represents the entire understanding and agreement between the Settlement Parties with respect to the subject matter hereof. The Settlement Parties stipulate and agree that no promise, warranty, representation, inducement or agreement, written or oral, not expressed or referred to in this Agreement, has been made and/or relied upon. In addition to the terms set forth in this Agreement, the terms of the Bar Order subsequently obtained by the Receiver shall be incorporated by reference herein.

7. **MODIFICATIONS:** This Agreement may not be modified or amended in any respect whatsoever, except by a writing signed by all of the Settlement Parties and approved by the Receivership Court.

8. **NOTICES:** A notice required by the Agreement shall be provided to:

If to the Receiver to:

***James D. Gassenheimer, Esquire***

BERGER SINGERMANN, P.A.

1000 Wachovia Financial Center

200 South Biscayne Boulevard

Miami, Florida 33131

Telephone: (305) 755-9500, Ext. 4383

Facsimile: (305) 714-4340

And, if to Sukoff, to:

***Howard Kahn, Esquire***

KAHN, CHENKIN & RESNIK, P.L.

1815 Griffin Road, Suite 207

Dania, Florida 33304

Telephone: (954) 647-7036

Facsimile: (954) 321-0176

9. **WAIVER:** No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the party against whom enforcement is sought.

10. **CONSTRUCTION AND HEADINGS:** In giving meaning to this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular. The Settlement Parties agree that the section headings contained herein are included for convenience only and are not to be deemed part of this Agreement.

11. **BINDING EFFECT:** This Agreement, upon execution and approval by the Receivership Court, is binding upon the Settlement Parties hereto, their heirs, successors and assigns.

12. **REPRESENTATIONS AND WARRANTIES:** The signatories to this Agreement mutually represent and warrant that they have full power and authority to execute this Agreement, unless such authority is not provided by the Court in the Receivership Case, in which case the Agreement shall be void. Provided this Agreement is approved by the Court in the Receivership Case it shall bind the Settlement Parties, Berman, Schwartz, Sukoff, the MAMC Lenders/Non-Original Members of NH II, the Receiver and MAMC. The Receiver's counsel agrees to immediately following execution of this Agreement, file and set for hearing a motion seeking approval and ratification of this Agreement.

13. **SEVERABILITY:** If any part of this Agreement is deemed to be invalid in any court of law, it shall be deemed severed and the remaining provisions of this Agreement will thereby remain in full force and effect. Either party may elect to void this Agreement if any modification by the Court materially alters the terms of the Agreement.

14. **ENFORCEMENT:** Each of the Settlement Parties may enforce this Agreement, as a valid contract, and may obtain any lawful remedy enforcing the Agreement.

15. **DRAFTING, ADVICE OF COUNSEL, AND VOLUNTARY EXECUTION:**

The Settlement Parties acknowledge and agree that (i) each of the Settlement Parties has participated fully in negotiating and drafting the terms hereof; (ii) each of the Settlement Parties has entered into this Agreement freely, voluntarily, without duress, coercion or oral inducement, and for valuable consideration; and (iii) this Agreement shall not be more strictly construed against either of the Settlement Parties than against the other.

16. **CONSIDERATION:** The Settlement Parties hereto acknowledge and agree that each is foregoing certain rights and assuming certain duties and obligations, which, but for this Agreement, would not have been foregone or assumed. Accordingly, the Settlement Parties agree that this Agreement is fully and adequately supported by consideration and is fair and reasonable in all of its terms.

17. **RELEASE AND BAR ORDER:** Each of the Settlement Parties does hereby fully and forever compromise, settle, release, acquit and discharge the other, their successors, and assigns from any and all past, present or future claims, causes of action, suits, demands, judgments, liabilities, costs for obligations of any nature whatsoever, whether based on in tort, contract or other theories of recovery, which may now or in the future exist between the Settlement Parties regarding NH II. The Settlement Parties hereby represent and warrant that prior to the execution of this Agreement, they have been fully apprised of the sufficient relative data, either through experts or other sources, in order to intelligently exercise a judgment in deciding whether or not to execute this instrument, and in deciding on the contents of the same. To decision of the parties to execute this Agreement was not predicated on or influenced by any

declarations or representations not expressly contained herein. The Settlement Parties further agree that they shall support the application and entry of a Bar Order forever barring all claims by the Settlement Parties and parties mentioned herein and above against NH II and any party to this Agreement, and binding all the Settlement Parties and Parties mentioned herein to the Settlement Terms contained herein with regards to the disbursement of the net sales proceeds of NH II.

18. **COUNTERPARTS/FAX SIGNITURES.** The parties stipulate that this agreement may be executed in counterparts which together shall constitute the original agreement. The parties further stipulate to accept telefaxed signatures as original for the purpose of seeking court enforcement of the Agreement, however, Sukoff shall thereafter provide an original signature page by mail.

**ACCEPTED AND AGREED TO BY:**

Dated this \_\_\_\_ day of December 2008.

**IRA SUKOFF, as Intervenor**

**Michael I. Goldberg, as Receiver for .**  
Berman Mortgage Corporation, MAMC  
Incorporated, MAMC Lenders, and the  
Receivership Assets

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**Howard N. Kahn, Esquire**  
*Counsel for Intervenor Ira Sukoff*  
KAHN, CHENKIN & RESNIK, P.L.  
1815 Griffin Road, Suite 207  
Dania, Florida 33304  
Telephone: (954) 321-0176  
Facsimile: (954) 321-0177

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**James D. Gassenheimer, Esquire**  
*Counsel for Michael I. Goldberg, Receiver*  
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